THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19016 of 2005

Dated: 21st October, 2005.

Between:

Jangeti Satyanarayana … Petitioner

And

1. The Govt. of A.P., rep. by its Principal Secretary, Agriculture & Co-operation, Secretariat, Hyderabad, and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19016 of 2005

ORDER:

This writ petition is filed aggrieved by the order passed by the 3rd respondent – The District Collector (Co-operation), East Godavari District, Kakinada under Section 15-A of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') directing merger of Challapalli Primary Agricultural Co-operative Society with Uppalaguptam Primary Agricultural Co-operative Society which was identified as First Focal Point Society with effect from 25-7-2005.

For proper appreciation of the controversy involved, the facts in brief may be noted as under :

The petitioner claims to be a Member and Ex-President of Primary Agricultural Co-operative Society (for short, 'PACS'), Challapalli Village, Uppalaguptam Mandal, East Godavari District. It is stated that the said society was established long back and it consists of 4,855 members covering two villages namely Challapalli and S.Yanam. It is also stated that the said society has all the facilities including own building, sales-counters and etc., and that it is not in receipt of any aid from the State Government either in the form of share capital or in the shape of any guarantee for repayment of loans as defined under Section 43 of the A.P. Co-operative Societies Act, 1964. While so, a notice dated 20-6-2005 was issued by the 3rd respondent stating that as per the norms prescribed under G.O.Ms.No.176, dated 14-6-2005 certain societies situated in Uppalguptam Mandal namely Bhimanapalli PACS, Challapalli PACS and Saripalli PACS have been identified as Non-viable Societies and that the same are proposed for amalgamation/merger under Section 15-A of the Act with PACS, Uppalaguptam which is identified as Focal Point Non-viable Society considering the parameters of accessibility, infrastructure facilities available and etc., so as to serve the cause of the farmers in an emphatic measure and therefore inviting objections/suggestions from the societies or any other members or other persons concerned with the affairs of the society within 21 days from the date of publication of the said notification. Pursuant thereto, the PACS, Challapalli convened a General Body Meeting and passed a Resolution dated 25-6-2005 against the proposed amalgamation and submitted a representation to that effect to the third respondent in which it was stated that the Identified Focal Point Non-viable Society is far away and that it will be inconvenient to the members to reach the said society and avail the credit facility particularly in view of lack of proper transport. It is

alleged that without considering the said representation in proper perspective, the third respondent issued the impugned proceedings dated 25-7-2005 directing merger of PACS, Challapalli with the Identified Focal Point Non-viable Society i.e., PACS, Uppalaguptam.

It is also contended that PACS, Challapalli is more focal than Uppalaguptam PACS with regard to the strength of the members, share capital, working capital, godown facilities and the extent of ayacut. Hence, there is no justifiable reason in identifying the PACS, Uppalaguptam as Focal Point Non-viable Society in preference to PACS, Challapalli. It is alleged that the merger has taken place only due to pressure exerted by the local M.L.A. contrary to the guidelines issued by the Government as well as the reports of the Task Force Committee and Expert Committee. The further contention raised is that the distance between the PACS, Challapalli and PACS, Uppalaguptam is about 40 kms as certified by the Secretary, Gram Panchayats of S.Yanam and Challapalli and therefore on that ground also the impugned merger is illegal. It is also contended that having regard to the facts and circumstances of the case, PACS, Challapalli ought to have been retained as an independent society and in any event ought not to have been merged with another Non-viable Society.

On behalf of the respondents, the District Co-operative Officer, E.G. District, Kakinada filed a counter-affidavit stating that the Primary Agricultural Co-operative Societies in the State are functioning under 3-Tier Credit System for which the State Government is the sole guarantor for the money financed by NABARD. The Primary Agricultural Co-operative Societies are affiliated to DCC Banks at District Level and are availing credit facilities like waiver of interest, interest rebate, resetting of interest to the members/farmers in distress. The State Government has also been providing share capital contribution, margin money facility to Primary Agricultural Co-operative Societies through various Centrally Sponsored Schemes like ICDP, so as to improve their infrastructure facilities and business turnover. As per the provisions of Section 43 (1), financial aid in any form from the Government including subsidies to any society shall be termed as State aid. Under the implementation of ICD Project in certain identified mandals in the district, the State Government has contributed a sum of Rs.2,69,65,700/- towards share capital contribution and margin money of Rs.1,51,01,000/- besides granting managerial subsidy worth Rs.1,10,28,200/-. The

same pattern of assistance is being provided by the State Government to all Primary Agricultural Co-operative Societies throughout the State in the shape of various schemes. Thus, it has been contended that the claim of the petitioner that the PACS, Challapalli is not receiving any State aid is incorrect. It is further stated that though it is true that in response to the Notification dated 20-6-2005, 169 members who attended the General Body Meeting of the PACS passed a resolution against the proposed merger and objections were also received in the form of a separate representation requesting to retain the said society as a Focal Point Society, the said objections were rejected after due consideration. However, the objections received from Bhimanapalli PACS were accepted as the said PACS is having better infrastructure and since it was considered to be most deserving of all the Non-viable PACS to be identified as Second Focal Point Society in Uppalaguptam Mandal as per the parameters prescribed in para-7 (f) and para-7 (g) of G.O.Ms.No.176, dated 14-6-2005. Accordingly, in modification of the Notification dated 20-6-2005, the third respondent identified Bheemanapalli PACS as Second Focal Point Society in Uppalaguptam Mandal with effect from 25-7-2005. Having examined all the objections, the third respondent ordered for the merger of Challapalli PACS and Saripalli PACS of Uppalaguptam Mandal in the identified 1st Focal Point Society i.e., Uppalaguptam PACS in the Uppalaguptam Mandal with effect from 25-7-2005 in exercise of the powers conferred under Section 15-A of Andhra Pradesh Co-operative Societies Act 7 of 1964 and in terms of the norms prescribed by the Government in the matter. It is further stated that the financial position of all the Identified Non-viable Societies is almost the same inasmuch as they did not comply with the norms prescribed. Therefore, initially it was proposed to merge all the said Non-viable Societies in the Mandal with one Focal Non-viable Society (i.e,) Uppalaguptam PACS, as the said society is situated in the Mandal Head-Quarters keeping in view the provisions of Para 7 (e) of G.O.Ms.No.176, Agriculture & Cooperation (Coop.V) Department, dated 14-6-2005. In the wake of the receipt of objections from certain societies in the Mandal for the merger with Uppalaguptam PACS and after due scrutiny of the objections, and keeping in view its central location and better infrastructure the Bheemanapalli PACS has been identified as Second Focal Point Non-viable Society in the Uppalaguptam Mandal in accordance with the provisions of para 7(g) of G.O.Ms.No.176, dated 14-6-2005. Accordingly, orders were issued for merger of Challapalli PACS and Saripalli PACS with Uppalaguptam PACS which is located at the Mandal Head-quarters. Thus, it was

pleaded that the entire restructuring process was carried out duly following the statutory provisions under Section 15-A of the Act and in terms of the norms/guidelines prescribed under G.O.Ms.No.176, dated 14-6-2005 and therefore the interference by this Court is not at all warranted.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the Government of A.P. having felt that there is need to restructure the Cooperative Credit Institutions for their strengthening and affective functioning for making them Viable has issued G.O.Ms.No.176, dated 14-6-2005 approving a scheme for the said purpose and formulating certain guidelines for implementation of the scheme. Under the said order, six norms prescribed by the Expert Committee have been adopted with certain modifications for identifying Viable Societies. The said six norms are as under :

Sl.No. Norm Viable

---

1. Positive Net Worth Level of accumulated losses
within owned funds

2. Performance in (i) Deposits not below the
managing resources level of previous year
and
(ii) Ability to repay borrowed
funds on time :
A repayment rate of 75% or
More (i.e,. there are either
No overdue borrowings or
overdues are within 25% of

the total borrowings)

3. *Quality of loan (i) Recovery rate at 60%*
   Portfolio or above

   And
   (ii) Overdues over 3 years
   to be less than 50% of total
   overdues.

4. Cost of management (i) 2% or less to Working
Capital
or
(ii) 30% or less to Gross
profit, whichever is less

5. Profitability Net profit at least for one
of the last 3 years

6. Audit Classification With "C" class for at least 2
of the last 3 years.

As can be seen from the said guidelines, the societies which fulfill any of the three parameters extracted above, are to be identified as Viable Societies. In the alternative, the societies should satisfy the two norms prescribed by the Task Force constituted by Government of India, for identification of Viable Societies which are as under :

(i) Gross interest margin equal to or more than 50% of operating expenses, and

(ii) Recovery equal to or more than 50% of demand.

It is clear from the said guidelines that the Viable Societies shall be retained as it is without any addition / deletion of area of operations and all the Non-viable Societies in a Mandal are to be amalgamated / merged with one focal non-viable society in the same Mandal. It is also clear that no liquidation of any Non-viable Society is permissible and that there shall not be merger of any Non-viable Society with a Viable Society. From clause 10 of the said guidelines, it is clear that the District Collector is the competent authority to identify the Viable and Non-viable Societies, Mandal-wise and to take action as per the provision of Section 15-A of the Act read with rule 11-A of A.P. Cooperative Societies Rules, 1964 (for short, 'the Rules'). As per Sub-clause (iii) of Clause-10, the District Collector shall issue a Notification calling for objections regarding the proposed amalgamation of Non-viable Societies after due identification of the Viable and Non-viable Societies Mandal-wise. Sub-clause (iv) states that the Management Committees of the respective Non-viable Societies shall call for meeting of the General Body and place the subject for decision as per the provisions of Rule 11-B of APCS Rules, 1964. Under Sub-clause (v), the Government exempted the respective PACS from the provisions pertaining to quorum, in exercise of the powers conferred under Section 123 of the APCS Act, 1964 in the interest of expeditious completion of restructuring.

Coming to the case of the writ petitioner as pleaded in the affidavit, it is relevant to note that the petitioner also does not dispute the fact that the PACS, Challapalli has not satisfied the norms prescribed under G.O.Ms.No.176, dated 14-6-2005. However, it is contended that though the PACS, Challapalli is financially sound with sufficient working capital, in the recent past due to drought conditions the recovery has been crippled. That apart, since the 2nd crop will be harvested sometime at the end of April, normally the dues will be cleared by the farmers only in the month of April. However, the respondents have taken into consideration the dues as on 31-3-2005 and accordingly on the basis of the accounts of the society which were closed on 31-3-2005, the PACS, Challapalli was erroneously treated as a Non-viable Society. According to the petitioner, the said procedure adopted by the respondents being contrary to the real situation, the action of the respondents in identifying the PACS, Challapalli as Non-viable Society is illegal.

As noted above, under G.O.Ms.No.176, dated 14-6-2005, specific norms were prescribed in accordance with which the 3rd respondent has to identify the Viable and Non-viable Societies. When the competent authority in exercise of such power has concluded that the society in question is Non-viable, the law is well settled that this Court would decline to interfere with such decision in exercise of jurisdiction under Article 226 of the Constitution of India except where a clear case is made out to show that the decision making process is vitiated by mala fides or unreasonableness. This Court will never sit in appeal against such decision, but merely reviews the manner in which the decision was made. Since the petitioner failed to establish any of the said elements and particularly since the decision cannot be said to be in contravention of principles of natural justice or any statutory provision, I am unable to hold that the decision of the District Collector that the society in question is non-viable suffers from any infirmity. That apart, even assuming that the society in question is having sufficient business turnover as claimed by the petitioner, it cannot be held to be relevant for the purpose of process of amalgamation as mere business turnover does not reflect the financial health of a co-operative institution nor has anything to do with the parameters prescribed in G.O.Ms.No.176, dated 14-6-2005.

The learned Counsel for the petitioner while placing reliance upon a Full Bench decision of this Court in NAGESWARARAO v. GOVT. OF A.P. further contended that since the notice issued by the respondents with regard to the proposed amalgamation in this case was stereo-typed and bald notice without indicating the reasons nor anything about the guidelines, the same was not consistent with the principles of natural justice. Thus, according to the learned Counsel, the notice was defective and therefore the consequential impugned proceedings of merger are liable to be set aside on that ground alone.

In NAGESWARARAO'S case (1 supra) the Full Bench was dealing with a batch of cases in which the constitutional validity of Section 15-A of the Act was questioned. One of the grounds raised by the petitioners therein was that the notices published with regard to the proposed merger under Section 15-A did not contain the

particulars or reasons for the said proposal and that the guidelines on the basis of which the said notices were issued were not made available to the members of the societies. In the said context, the Full Bench held that the notice published should be one which should afford a reasonable opportunity to the affected persons to make effective representations and since the notices are bald notices and no reasons were given nor the guidelines were indicated nor G.Os. were enclosed, the said notices were not consistent with the principles of natural justice.

In the instant case, may be that the copy of G.O.Ms.No.176, dated 14-6-2005 was not enclosed to the notification dated 20-6-2005 under which objections / suggestions were invited against the proposed merger. However, it cannot be said that the necessary particulars were not published. A perusal of the said notification shows that the same contained the necessary particulars together with the reasons for the proposed merger. That apart, the Focal Non-Viable Society and the other Non-viable Societies proposed for merger along with the area of operations of the respective societies were also clearly specified in the Annexure to the Notification. A perusal of the resolution passed by the society makes it clear that all the members were very well aware of the contents of G.O.Ms.No.176, dated 14-6-2005. At any rate, the members of the society never raised such an objection in the General Body Meeting. Hence, the mere ground that the copy of the guidelines under G.O.Ms.No.176, dated 14-6-2005 was not furnished along with the notification dated 20-6-2005 is of no consequence.

In the facts and circumstances of the case, I am of the opinion that the member / society was afforded a reasonable opportunity to raise their objections effectively and they were not prejudiced in any manner whatsoever. The ratio laid down by the Full Bench in the above decision in the particular facts and circumstances with which the Full Bench was dealing, has no application to the case on hand.

Then, the only question that remains for consideration is whether the impugned order of merger suffers from any infirmity warranting interference by this Court under Article 226 of the Constitution of India.

In the light of the object with which Section 15-A of the Act was introduced into the Act in the year 1976 with particular reference to the reasons specified in G.O.Ms.No.176, dated 14-6-2005 while prescribing the guidelines for implementation of the scheme, it is clear that the whole exercise has been undertaken by the Government on the basis of a policy decision to restructure the Cooperative Credit Institutions in the State for their strengthening and effective functioning and for making them viable. For the said purpose, an Expert Committee was constituted which was suggested a package of reforms and on the basis of the report of the said Expert Committee, norms were prescribed for identifying the Viable and Non-viable Societies. That apart, the Task Force Committee constituted by the Government of India for the purpose of revival of Cooperative Credit Institutions also submitted a report to the Government of India suggesting two norms for identifying Viable Societies. Hence, it cannot be said that the power conferred on the 2nd respondent to identify the Viable and Non-viable Societies is unguided, but the exercise has to be done strictly in accordance with the norms suggested by the Expert Committee constituted by the State as well as Task Force Committee constituted by the Government of India and in the manner prescribed under G.O.Ms.No.176, dated 14-6-2005. There is no provision under the statute which provides for identification of the viability of the societies. What is provided under Section 15-A of the Act is only with regard to merger or amalgamation of the Non-viable Societies. In the case on hand, admittedly, the procedure prescribed under Section 15-A of the Act has been scrupulously followed. It is true that the society concerned by way of resolution opposed the proposed merger. However, most of the objections were on the ground that the Focal Point Non-Viable Society is far off and it would not be in the interest of his society. Such objections being extraneous to the essential policy of the State are untenable.

It is relevant to note that the petitioner has not challenged the policy of the State regarding the merger of the Non-viable Primary Agricultural Cooperative Societies, but he is only assailing the order of merger on the ground that the same is

arbitrary, illegal and in violation of the principles of natural justice.

On a careful consideration of the above aspects, I am of the view that the abovesaid reasons putforth by the petitioner are irrelevant and cannot be taken as valid grounds either for identifying the said society as a Viable Society or to declare the impugned order as illegal. Once, the society failed to fulfill any of the three parameters prescribed by the Expert Committee or in the alternative failed to satisfy the two norms prescribed by the Task Force, it would automatically follow that such society should be termed as a Non-viable Society.

The contention of the petitioner that the PACS, Challapalli is not receiving the State aid is also liable to be rejected in view of the explanation offered by the respondents in the counter-affidavit. I find force in the contention of the learned Government Pleader that the financial aid in any form from the Government including the subsidies shall be termed as 'State Aid' within the meaning of Section 43 of the Act. Since the petitioner does not dispute the fact that the State Government has contributed amounts towards share capital besides granting managerial subsidy, there is no substance in the contention of the petitioner that the PACS, Challapalli is not receiving State aid.

As stated above, since the petitioner failed to make out any case to establish that the impugned order is vitiated on any of the above grounds, the relief as prayed for cannot be granted. The Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

21st October, 2005.

gbs